

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Nanci E. Langley; and  
Robert G. Taub

Market Dominant Product Prices  
Inbound Market Dominant Multi-Service Agreements  
with Foreign Postal Operators 1  
HongKong–United States Postal Service  
Bilateral Agreement (MC2010-35)  
Negotiated Service Agreement

Docket No. R2012-4

ORDER APPROVING REQUEST TO INCLUDE HONGKONG POST GROUP  
BILATERAL AGREEMENT WITHIN AN EXISTING MARKET DOMINANT PRODUCT

(Issued December 20, 2011)

I. INTRODUCTION

On November 14, 2011, the Postal Service filed notice, pursuant to 39 CFR 3010.40 *et seq.*, of a Type 2 rate adjustment concerning the inbound portion of a bilateral agreement with HongKong Post Group (HongKong Post 2012 Agreement or Agreement). The Postal Service seeks to include the Agreement within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>1</sup> For the reasons discussed below, the Commission approves the request.

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<sup>1</sup> Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, November 14, 2011 (Notice); *see also* Docket Nos. MC2010-35,

## II. BACKGROUND

In Order No. 549, the Commission approved the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and the Strategic Bilateral Agreement Between United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement), and the China Post Group–United States Postal Service Letter Post Bilateral Agreement (CPG Agreement). In Order No. 700, the Commission approved the functionally equivalent HongKong Post Agreement (HongKong Post Agreement).<sup>2</sup> In Order 871, the Commission approved the functionally equivalent China Post 2011 Agreement.<sup>3</sup> In Order Nos. 995 and 996, the Commission approved the functionally equivalent Singapore Post and Australia Post Agreements, respectively.<sup>4</sup>

The Postal Service and HongKong Post, the postal operator for Hong Kong, are parties to the HongKong Post 2012 Agreement. The Agreement covers, *inter alia*, the delivery of inbound Letter Post, in the form of letters, flats, small packets, bags, and International Registered Mail service for Letter Post. It also includes an ancillary service for delivery confirmation scanning with Letter Post small packets. Notice at 4; Attachment 2 at 10. The Postal Service states that the planned inbound market dominant rates are intended to become effective on January 1, 2012, and to remain in effect for 1 year. *Id.* at 3; Attachment 2 at 6. The HongKong Post 2012 Agreement

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R2010-5 and R2010-6, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010 (Order No. 549).

<sup>2</sup> See Docket No. R2011-4, Order Approving Rate Adjustment for HongKong Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, March 18, 2011 (Order No. 700).

<sup>3</sup> See Docket No. R2011-7, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 23, 2011 (Order 871).

<sup>4</sup> See Docket No. R2012-1, Order Approving Rate Adjustment for Singapore Post–United States Postal Service Letter Post Bilateral Agreement Negotiated Service Agreement, November 23, 2011 (Order No. 995); Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011 (Order No. 996).

provides that it becomes effective after all regulatory approvals have been received, notification to HongKong Post, and mutual agreement on an effective date. *Id.* Attachment 2 at 1. The Agreement however, may be terminated by either party on no less than 30 days' written notice. *Id.* Attachment 2 at 2. The Postal Service contends the Agreement is similar and functionally equivalent to agreements already included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 2.

The Postal Service states that the projected financial performance of the HongKong Post 2012 Agreement is provided in the Excel file included with its filing. It contends that improvements should enhance mail efficiency and other functions for Letter Post items under the Agreement. *Id.* Attachment at 4-5.

The Postal Service asserts that the Agreement should not cause unreasonable harm in the marketplace since it is unaware of any significant competition in this market. *Id.* at 5-6.

Under 39 CFR 3010.43, the Postal Service is required to submit a data collection plan. The Postal Service indicates that it intends to report information on this Agreement through its Annual Compliance Report and proposes that no special data collection plan be established for this Agreement. With respect to performance measurement, it requests that the Commission also exempt the HongKong Post 2012 Agreement from separate reporting requirements under 39 CFR 3055.3(a)(3) as authorized for previously filed functionally equivalent agreements under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 7.

The Postal Service advances reasons why the instant Agreement is functionally equivalent to the previously filed CPG Agreement, TNT Agreement, HongKong Post Agreement, and China Post 2011 Agreement. It contends that it contains the same attributes and methodology and fits within the Mail Classification Schedule language for the Inbound Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 8-10. Additionally, it states that the

HongKong Post 2012 Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory. *Id.* at 9.

The Postal Service's Notice identifies specific terms that distinguish the instant Agreement from the previous HongKong Post Agreement. *Id.* at 10-11. The Postal Service contends that the instant Agreement is nonetheless functionally equivalent to existing agreements. *Id.* at 11.

In its Notice, the Postal Service maintains that certain portions of the Agreement, prices, and related financial information should remain under seal. *Id.* at 11-12; *id.* Attachment 1.

The Postal Service concludes that the HongKong Post 2012 Agreement should be added as a functionally equivalent agreement under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 12.

### III. COMMENTS

Comments were filed by the Public Representative.<sup>5</sup> No other interested person submitted comments. The Public Representative reviewed the HongKong Post 2012 Agreement's functional equivalence with previously filed agreements under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and its compliance with 39 U.S.C. 3622(c)(10). He maintains that the HongKong Post 2012 Agreement is likely to improve the net financial position of the Postal Service or otherwise enhance the operational performance of the Postal Service during the term of the Agreement. *Id.* at 2-3. He maintains that the HongKong Post 2012 Agreement is functionally equivalent to the CPG Agreement.

The Public Representative notes that he is unable to assess the effect of any quality of service link to performance under the instant Agreement. He states that the

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<sup>5</sup> Public Representative Comments on Postal Service Notice Concerning Rate Adjustment for Bilateral Agreement with HongKong Post 2012 and Functionally Equivalent Negotiated Service Agreement, November 30, 2011 (PR Comments).

financial model indicates that the negotiated rates should result in an improvement over the Universal Postal System (UPU) rates. *Id.* at 4. The Public Representative also concurs with the Postal Service's conclusion that the HongKong Post 2012 Agreement should support improvement in the Postal Service's operational performance during the contract period. *Id.* Finally, he maintains that the Postal Service has adequately supported its position that the HongKong Post 2012 Agreement will not cause unreasonable harm to the marketplace and will be made available on public and reasonable terms to similarly situated mailers. *Id.* at 4.

#### IV. COMMISSION ANALYSIS

In Order No. 549, the Commission established the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product and two functionally equivalent agreements. In its analysis of the market dominant product in that proceeding, the Commission reviewed the statutory requirements for inclusion of negotiated service agreements under this product. As the Postal Service seeks to add another functionally equivalent agreement in the instant proceeding, there is no need to determine whether the instant Agreement should be classified as market dominant.

*Statutory responsibilities.* The statutory and regulatory provisions of 39 U.S.C. 3622(c)(10) and 39 CFR 3010.40(a) are applicable to the instant Agreement and require the Commission to make a finding that the proposed market dominant negotiated service agreement must either (1) improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or (2) enhance the performance of various operational functions (39 U.S.C. 3622(c)(10)(A)(ii)). Additionally, the negotiated service agreement may not "cause unreasonable harm to the marketplace" (39 U.S.C. 3622(c)(10)(B)) and "must be available on public and reasonable terms to similarly situated mailers." 39 CFR 3010.40(c).

*Financial analysis.* The Postal Service states that the negotiated rates in the bilateral agreement represent an improvement over the default rates set by the UPU. Notice at 1. Based upon the financial model, the Postal Service further states that the

Agreement will improve the net financial position of the Postal Service and therefore complies with section 3622(c)(10). *Id.* at 4. The Public Representative agrees that the HongKong Post 2012 Agreement's negotiated rates are an improvement over the default UPU rates.

The Postal Service states that the Agreement will not result in unreasonable harm to the marketplace. *Id.* at 5. The Postal Service contends that there is no significant competition in this market. As a result, it believes that HongKong Post is in the dominant position in the country to accept Letter Post, and the instant Agreement does not pose competitive harm in the marketplace. *Id.* at 6. The Postal Service states that because the Postal Service and HongKong Post serve as their respective countries' designated operators to provide universal Letter Post service under the UPU Convention, there are limited alternatives for receiving inbound single-piece Letter Post. It states particularly because no other entities are subject to terminal dues rates with respect to inbound Letter Post to the United States from Hong Kong, the market for the services subject to this Agreement is limited. *Id.* at 6. Because it is not aware of any significant competition in this market, the Postal Service expects there will be no significant impact on small business competitors.

Based on a review of the Postal Service's filing, the Commission concludes that the planned rates comport with 39 U.S.C. 3622(c)(10). Quality of service adjustment issues may be examined as part of the review of the Postal Service's FY 2012 Annual Compliance Report.

The Public Representative contends that the Postal Service's assertion that the bilateral rates are an improvement over UPU default rates is not adequately supported. He suggests that future notices seeking to include bilateral agreements within the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 product include supporting workpapers showing the cost coverage using the default terminal dues. PR Comments at 5, n.12. The Commission agrees. In future notices involving a Type 2 rate adjustment which it asserts represents an improvement over

default rates established under the UPU Acts for inbound Letter Post items, the Postal Service shall file workpapers supporting its assertion.

*Functional equivalency.* The Postal Service states that additional performance improvements include continuation of the delivery confirmation service for Letter Post small packets for tracking and reporting certain scanning events and information on Offices of Exchange for registered mail. Notice at 4-5.

The Postal Service contends that the instant Agreement is functionally equivalent to the previously filed China Post, TNT, CPG, and HongKong Post Agreements. It asserts that the instant Agreement includes similar terms and conditions, *e.g.*, is with a foreign postal operator, conforms to a common description, and relates to rates for Letter Post tendered from the postal operator's territory with accompanying ancillary services. *Id.* at 8-9.

The Postal Service also identifies differences in specific terms that distinguish the instant Agreement from the previous HongKong Post Agreement. *Id.* at 10-11. These distinctions include the term, clarification of legal requirements, revisions in the rate tables, and specifications for certain products and other changes. *Id.*

The instant Agreement appears to be similar to the agreements previously filed as functionally equivalent agreements in Docket Nos. R2010-5 and R2010-6, although they differ in some minor respects relative to specific negotiated and general terms.<sup>6</sup> These differences notwithstanding, the Commission concludes that the instant Agreement may be included in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

*Request to exclude the Agreement from service performance measurement reporting.* The Postal Service requests an exception from the requirement to report

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<sup>6</sup> The Commission uses the reference to the agreements in Docket Nos. R2010-5 and R2010-6 for comparison purposes only and recognizes the Postal Service has compared the instant Agreement with the previous HongKong Post Agreement. During the period that the instant Agreement was being reviewed by the Commission, two additional agreements have been added to the Multi-Service Agreements with Foreign Postal Operators 1 product. Because the Postal Service has not identified a "baseline agreement," the current agreements collectively serve as the measure for functional equivalence.

service performance for the instant Agreement similar to the precursor agreements filed under the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 7. In Docket No. R2012-2, the Postal Service requested and the Commission granted an exception to reporting requirements under 39 CFR 3055(a)(3) for functionally equivalent agreements added to the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1. Therefore, this exception is granted.

*Early termination.* The Postal Service shall promptly notify the Commission if the HongKong Post 2012 Agreement terminates earlier than the proposed term, but no later than the actual termination date.

*Conclusion.* The Commission also finds that the HongKong Post 2012 Agreement falls within the parameters of the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. The HongKong Post 2012 Agreement filed in this docket is included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35, R2010-5 and R2010-6) product.
2. The Postal Service shall notify the Commission of the effective and termination dates of the HongKong Post 2012 Agreement as set forth in the body of this Order.
3. As discussed in the body of this Order, future similar Type 2 rate adjustments shall include workpapers to support the contention that the planned rates are an improvement over UPU default rates.

4. The Postal Service request that the HongKong Post 2012 Agreement be excepted from service performance measurement reporting pursuant to 39 U.S.C. 3055.3(a)(3) is granted.
5. Within 30 days of expiration, or upon early termination of the HongKong Post 2012 Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

By the Commission.

Shoshana M. Grove  
Secretary